

CITY OF SAVANNAH, GEORGIA

**TELECOMMUNICATIONS
REGULATORY ORDINANCE**

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AN ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF SAVANNAH, GEORGIA, BY ADDING TO AND ORDAINING A NEW ARTICLE DD, OF CHAPTER 1, PART 6 (LICENSING AND REGULATION), ENTITLED “TELECOMMUNICATIONS” FOR THE PURPOSE OF ESTABLISHING A PROCEDURE FOR GRANTING TELECOMMUNICATIONS FRANCHISES AND RENEWALS THEREOF, AND ESTABLISHING RULES AND REGULATIONS GOVERNING THE OPERATION OF TELECOMMUNICATIONS SYSTEMS WITHIN PUBLIC RIGHTS-OF-WAY.

WHEREAS, with enactment of the federal Telecommunications Act of 1996, the Mayor and Aldermen have determined that it is in the best interests of and consistent with the convenience and necessity of the City to grant Non-exclusive Franchises to companies desiring to provide Telecommunications Services within the territorial boundaries of the City and on the terms and conditions herein, and as may be further described in each Franchise Agreement; and

WHEREAS, the City has the authority to regulate the occupation and use of Public Rights-of-Way; and

WHEREAS, the City has determined that the grant of Franchises to use and occupy the Public Rights-of-Way for the provision of Telecommunications Services would promote the health, safety and welfare of the public, stimulate commerce and otherwise serve the public interest; and

WHEREAS, the City desires to structure and implement a fair and orderly process for the grant of Franchises to occupy and use the Public Rights-of-Way to provide Telecommunications Services in the City, including the negotiation of Franchise provisions to protect the public interest; and

WHEREAS, the City intends to exercise, to the fullest extent permitted by applicable law, its authority with respect to the regulation of the occupation and use of Public Rights-of-Way in connection with the provision of all Telecommunications Services,

NOW THEREFORE BE IT ORDAINED that the Code of the City of Savannah, Georgia (1978) be, and hereby is, amended by adding to and ordaining a new Article DD, of Chapter 1, Part 6, entitled “Telecommunications”, said Article to read as follows:

ARTICLE DD. TELECOMMUNICATIONS

SECTION 6-2501: General

Subsection 6-2501.1: Purpose: The purpose and intent of this Ordinance is to:

- a. Establish a local policy concerning use of Public Rights-of-Way by Telecommunications Carriers and Providers in accordance with the federal Telecommunications Act of 1996;
- b. Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to Telecommunications Providers and Services;
- c. Promote competition in telecommunications;
- d. Minimize unnecessary local regulation of Telecommunications Providers and Services;
- e. Encourage the provision of advanced and competitive Telecommunications Services on the widest possible basis to the businesses, institutions and residents of the City;
- f. Permit and manage reasonable access to the Public Rights-of-Way of the City for telecommunications purposes on a competitively neutral and nondiscriminatory basis;
- g. Conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City;
- h. Assure that the City's current and ongoing costs of granting and regulating access to and use of the Public Rights-of-Way are fully paid by the Persons seeking such access and causing such costs;
- i. Secure fair and reasonable compensation to the City and the residents of the City for permitting private use of the Public Rights-of-Way;
- j. Assure that all Telecommunications Carriers providing facilities or services within the City comply with the ordinances, rules and regulations of the City;
- k. Assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare; and,

- l. Enable the City to discharge its public trust consistent with rapidly evolving federal and State regulatory policies, industry competition, and technological development;
- m. Establish separate and distinct local Franchising application and Franchising policies, terms and conditions for providers of Telecommunications Services as apart from such policies for local providers of Franchised Cable Services and,
- n. Minimize disruption of traffic and pedestrian flow in Public ROW.

Subsection 6-2501.2: Definitions: For the purpose of this Ordinance, and its interpretation and enforcement, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used indicates otherwise:

“Abandonment” means failure of an owner of a Telecommunications or Utilities Facility to use such Facility for any reason over a continuous period of twelve (12) months.

“Affiliate” means a Person that (directly or indirectly) owns, controls, is owned or controlled by, or is under common ownership or control of another Person.

“Cable Service” means any lawful service(s) provided through electrical or electronic signals, including the one-way transmission to subscribers of video programming and other programming services, together with subscriber interaction, if any, which is required for the selection of such programming and programming services that the cable operator makes available to all subscribers generally.

“City” means the Mayor and Aldermen of the City of Savannah, Georgia, a municipal corporation of the State of Georgia, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

“City Council” means the Mayor and Aldermen of the City assembled as the legislative body, or any future board constituting the legislative body of the City.

“City Engineer” means the Director of the City Engineering Department.

“City Manager” means the City Manager of the City or any future duly appointed and acting administrative head of the City, or his designee.

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“City Property” means and includes all real property owned by the City, other than Public Streets and Utility Easements as those terms are defined herein, and all property held in a proprietary capacity by the City, which are not subject to Right-of-Way Franchising as provided by this Article.

“City Traffic Engineer” means the Director of the City Traffic Engineering Department.

“Excavation” means any land disturbing activity involving the movement or displacement of earth.

“Excess Capacity” means the volume or capacity in any existing or future duct, conduit, manhole, handhole or other Utility Facility within the Public Right-of-Way that is or will be available for use for additional Telecommunications Facilities.

“FCC” or “Federal Communications Commission” means the federal administrative agency, or lawful successor, authorized to regulate and oversee Telecommunications Carriers, Services and Providers on a national level.

“Franchise” means an initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the occupation and use of the Public Rights-of-Way to provide Telecommunications Services.

“Grantee” means the person, firm, or corporation to whom or which a Franchise is granted by the Council under this Ordinance, and the lawful successor, transferee, or assignee of said person, firm, or corporation.

“Gross Revenue” means all revenues (exclusive of; (1) sales tax remitted to the State of Georgia and any other item(s) excluded by local, state, or federal law, (2) interconnect [pass-through] charges for access to carriers other than Grantee, and (3) revenues collected to directly pay fees resulting from this Ordinance) received directly or indirectly by a Grantee, its Affiliates, subsidiaries, parent, and any person, firm, or corporation in which the Grantee has a financial interest, or from any source whatsoever, arising from or attributable to the sale or exchange of telecommunications and related services by the Grantee or arising from or attributable to the Grantee’s direction of its telecommunications business within the corporate limits of the City including but not limited to:

- a. All Telecommunications Service revenues charged on a flat rate basis;

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- b. All Telecommunications Service revenues charged on a usage sensitive or mileage basis;
- c. All revenues from installation service charges;
- d. All revenues from connection or disconnection fees;
- e. All revenues from penalties or charges to customers for checks returned from banks;
- f. All revenues from equipment sold or rented to a customer upon the customer premises;
- g. All revenues from local and long distance service;
- h. All revenues from authorized rental of conduit space;
- i. All revenues from charges for access to local and long distance networks;
- j. All revenues from authorized rentals of any portion of Grantee's Network, including plant, facilities, or capacity leased to others;
- k. All other revenues collected from Grantee's business pursued within the City;
- l. Recoveries of bad debts previously written-off and revenues from the sale or assignment of bad debts, but excluding unrecovered bad debts charged-off after diligent, unsuccessful efforts to collect;
- m. All revenues from enhanced data service;
- n. All interconnect revenues from interexchange carriers;
- o. All revenues derived from co-location connection fees; and
- p. All revenues from subsidiary companies derived from use of Grantee's Network.
- q. All revenues from late fees imposed and paid by customers.

"Law" means any and all Federal, state and local statutes, codes, regulations, rules, orders, and other rulings from a legislative, administrative, regulatory or judicial body, including but not limited to

the FCC or the Telecommunications Act of 1996.

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“Non-exclusive” means that a right, privilege, grant, Franchise, or license is not given or created for the sole use and to the restriction of the same being allowed to any other Person over, across, or under the same territorial property or for the same or similar activities, uses, or undertakings.

“Overhead Facilities” means utility poles, Utility Facilities and Telecommunications Facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

“Person” means and includes corporations, companies, associations, joint stock companies or associations, firms, partnerships, limited liability companies and individuals and includes their lessors, trustees and receivers.

“Private Streets” are privately owned streets constructed to City Standards.

“PSC” or “Public Service Commission” means the Georgia State administrative agency, or lawful successor, authorized to regulate and oversee Telecommunications Carriers, Services and Providers.

“Public Right-of-Way” or “ROW” means and includes all Public Streets and Utility Easements, as those terms are defined herein, now or hereafter owned by or granted to the City, but only to the extent of the City’s right, title, interest or authority to grant a Franchise to occupy and use such streets and easements for Telecommunications Facilities.

“Public Street” or “Street” means a street, road, highway, boulevard, freeway, lane, path, alley, court, sidewalk, parkway, or drive which is owned by a public entity or to which a public entity has an easement for street purposes, and with respect to which, and to the extent that, the City has a right to grant use of the surface of, and space above and below in connection with a Franchise for a Telecommunications System.

“State” means the State of Georgia.

“Surplus Space” means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the PSC, to allow its use by a Telecommunications Carrier for pole attachment.

“Telecommunications Carrier” means and includes every Person that directly or indirectly owns, controls, operates or manages plant, equipment, or property within the City, used or to be used for

the purpose of offering Telecommunications Services.

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“Telecommunications Facilities” or “Telecommunication System” means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to provide or offer Telecommunications Services.

“Telecommunications Provider” means and includes every Person who provides Telecommunications Service over Telecommunications Facilities without any ownership or management control of the Facilities.

“Telecommunications Service” means the providing or offering for rent, sale, resale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

“Utility Easement” means any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with Telecommunications Facilities.

“Utility Facilities” means the plant, equipment, and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the ROW of the City and used or to be used for the purpose of providing utility or Telecommunications Services.

Subsection 6-2501.3: Telecommunications Franchise: Except as otherwise provided herein, any Telecommunications Carriers or Providers who desire to construct, install, operate, maintain or otherwise locate or lease Telecommunications Facilities in, under, over or across any ROW, and provide Telecommunications Service to Persons or areas in the City, shall first obtain a Franchise granting the privilege to use such ROW from the City pursuant to Section 6-2502 of this Ordinance.

Subsection 6-2501.4: Cable Television Franchise: Any Telecommunications Carrier or provider who desires to construct, install, operate, maintain or locate Telecommunications Facilities in any ROW for the purpose of providing Cable Service to Persons in the City shall first obtain a cable Franchise from the City in accordance with the separate Ordinance, Article AA of the City Code, titled, “Cable Television Regulatory Ordinance”. A Telecommunications Carrier or Provider offering cable television service exclusively is not required to obtain an additional telecommunications franchise by this Ordinance.

Subsection 6-2501.5: Application to Existing Franchise Ordinances and Agreements: This Ordinance shall have no effect on any existing Franchise agreement until:

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- a. The expiration of said Franchise agreement; or,
- b. An amendment to an unexpired Franchise ordinance or Franchise agreement is effective, unless both parties agree to defer full compliance to a specified date not later than the present expiration date.

However, any Telecommunications Carrier or Provider with an existing Franchise agreement must sign a new telecommunications Franchise agreement if they expand their Telecommunications Service beyond that authorized in their existing franchise.

Subsection 6-2501.6: Violations and Penalties:

- a. Any Franchise agreement entered into by the City and a Grantee shall be subject to the terms, provisions, and conditions of this Ordinance. It is declared that any violation of a Franchise agreement shall be deemed a violation of this Ordinance even as to any term, provision, or condition of the Franchise agreement not expressly set forth in this Ordinance. It is further declared that the Recorder's Court of Chatham County, Georgia, shall have jurisdiction of any violation or alleged violation of this Ordinance or the Franchise agreement. The acknowledgment of this jurisdiction shall not abrogate or impede the right of any party to assert a claim in the nature of breach of contract or otherwise, arising under or in respect to this Ordinance or a Franchise agreement in any proceeding in another court of competent jurisdiction.
- b. In accordance with State Law, any Person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

Subsection 6-2501.7: Other Remedies: Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City or Grantee may have, at Law or in equity, for enforcement of this Ordinance or the rights granted under this Ordinance.

Subsection 6-2501.8: Severability: If any section, subsection, sentence clause, phrase, or other portion of this Ordinance, or its application to any Person, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions thereof.

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Subsection 6-2501.9: Item Filing: When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the Office of the Clerk of Council.

Subsection 6-2501.10: Notices: All notices which the City may give to a Grantee or which a Grantee may give to the City shall be given in writing and may be given by first class mail, postage prepaid addressed to the Grantee's most recent address on file with the City. Such notices, so sent by mail, shall be deemed given three days after deposit in the U.S. Mail.

Subsection 6-2501.11: Coordination and Interpretation: In the coordination and interpretation of this Ordinance, the Law and provisions of this Ordinance shall prevail over any conflicting provision in the Franchise agreement; respective parties agree to modify, in writing, any affected terms and conditions of a Franchise agreement to bring them into compliance. In the coordination, interpretation, or enforcement of this Ordinance, whenever the singular, plural, masculine, feminine, or neuter is employed, such references shall be deemed interchangeable whenever it is necessary to preserve the form and intent of this Ordinance.

Subsection 6-2501.12: Affect of Amendments: Any provision amendment or ruling to the federal Telecommunications Act of 1996 or Law which conflicts with any provision of this Ordinance so as to eliminate, restrict, reduce, or otherwise affect the rights and powers of the City pertaining to the subject matter herein shall take precedence over the matter or item in this Ordinance to the extent that such provision amendment or ruling would prohibit the continuation and validity of the same. Such an amendment shall be deemed an amendment of this Ordinance, ipso facto, upon its becoming effective without the necessity to amend this Ordinance.

Subsection 6-2501.13: Amendments to Ordinance: Any Franchise agreement issued pursuant to this Ordinance shall be subject to all amendments to this Ordinance effected during the term of the Franchise agreement.

Subsection 6-2501.14: Legal Proceedings: By accepting any Franchise pursuant to this Ordinance, the Grantee acknowledges that it is doing business in Chatham County, Georgia, and that it is subject to the Code of Ordinances of the City, and agrees that the venue and jurisdiction in any proceeding or action in a court of law or equity shall be in the United States District Court for the Southern District of Georgia, Savannah Division, or the State or local courts of Chatham County, Georgia, in whatever capacity the Grantee may be a party.

Subsection 6-2501.15: Delegation: Consistent with applicable law, the City Council shall have the right to delegate and redelegate, and to revoke any such delegation or redelegation, from time to time, any of its rights or obligations under this Ordinance to any body, organization or official. Any such delegation, redelegation or revocation, no matter how

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often made, shall not be deemed an amendment to this Ordinance or to require the consent of any applicant for a Franchise or Grantee. The City Council may also establish and appoint one or more advisory boards, with such duration and such number of members as the City Council shall determine, to advise it on such matters which are the subject of this Ordinance.

SECTION 6-2502: Telecommunications Franchise

Subsection 6-2502.1: Telecommunications Franchise: A telecommunications Franchise shall be required of any Telecommunications Carrier who desires to occupy ROW and of any Telecommunications Provider who desires to lease facilities in the ROW to provide Telecommunications Services in the City.

Subsection 6-2502.2: Franchise Application: Any Telecommunications Provider that desires a telecommunications Franchise pursuant to this Ordinance shall file an application with the City which includes the following information:

- a. The identity of the Franchise applicant, including all Affiliates of the applicant.
- b. A description of the Telecommunications Services that are or will be offered or provided by the Franchise applicant over lines and facilities owned and maintained by others, and the identity of the Person owning and maintaining those lines and facilities.
- c. A description of the transmission medium that will be used by the Grantee to offer or provide such Telecommunications Services.
- d. A network map of the leased facilities located within the City.
- e. Whether the applicant intends to provide Cable Service, video dialtone service or other video programming service, and sufficient information to determine whether such service is subject to cable franchising.
- f. The identity of applicant company majority owners, if applicable.
- g. A statement from the applicant that they will abide by all applicable Laws.
- h. Record of deposit of applicant's application and review deposit as described in Subsection 6-2503.2 of this Ordinance.
- i. Such other information deemed reasonably necessary as requested by the City Manager and/or City Council.

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Any Telecommunications Carrier that desires a telecommunications Franchise pursuant to this Ordinance shall file an application with the City which includes the information requested in Subsection 6-2502.2.a-i above, plus the following information:

- a. A description of the Telecommunications Services that are or will be offered or provided by the Franchise applicant over its existing or proposed facilities.
- b. To the extent practical; preliminary engineering plans, specifications and a network map of the facilities to be located within the City.
- c. A preliminary construction schedule, to include the area or areas of the City the applicant desires to serve.
- d. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
- e. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the Telecommunications Facilities and Services described in the application.
- f. Information to establish that the applicant has obtained all other required governmental approvals and permits to construct and operate the Facilities and to offer or provide the Telecommunications Services.
- g. A list of reference sites, and references, where the applicant has prior experience establishing similar networks.

Subsection 6-2502.3: Determination by the City: Within 90 days after receiving a complete application under Subsection 6-2502.2 hereof, the City Council shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial. Evaluation of applications will include, but not be limited to the following items of consideration:

- a. The financial and technical ability of the applicant.
- b. The legal ability of the applicant.
- c. The damage or disruption, if any, of ROW or private facilities, improvements, service,

travel or landscaping if the Franchise is granted.

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- d. The public interest in minimizing the cost and disruption of construction within the ROW.
- e. The effect, if any, on public health, safety and welfare if the requested Franchise is granted.
- f. Applicable federal, State and local telecommunications laws, regulations and policies.
- g. Such other factors as may affect the City's management of its ROW in the community interest.

Subsection 6-2502.4: Agreement: No Franchise shall be granted unless the applicant and the City have executed a written agreement setting forth the particular terms and provisions under which the Franchise to occupy and use ROW will be granted and the Grantee has provided to Risk Management certification of insurance in accordance with Subsection 6-2504.16 of this Ordinance.

Subsection 6-2502.5: Non-exclusive Grant: No Franchise granted under this Ordinance shall confer any exclusive right, privilege, license or Franchise to occupy or use the ROW for delivery of Telecommunications Services or any other purposes.

Subsection 6-2502.6: Term of Grant: Unless otherwise specified in a Franchise agreement, a telecommunications Franchise granted hereunder shall be valid for a term of seven (7) years. Refer to Subsection 6-2502.16 for Franchise agreement renewal applications.

Subsection 6-2502.7: Rights Granted: No Franchise granted under this Ordinance shall convey any right, title or interest in the ROW, but shall be deemed a Franchise only for the privilege to use and occupy the ROW for the limited purposes and term stated in the grant. Further, no Franchise shall be construed as any warranty of title.

Subsection 6-2502.8: Franchise Territory: A telecommunications Franchise granted under this Ordinance shall encompass all ROW within the territorial boundaries of the City of Savannah. However, all Grantee work within ROW must be preceded by an approved construction permit (see Subsection 6-2502.10 and Section 6-2505 of this Ordinance).

Subsection 6-2502.9: Location of Facilities: Unless otherwise specified in a Franchise agreement or limited by Grantee agreements with other ROW access providers, all Facilities shall be constructed, installed and located in accordance with the following terms and conditions:

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- a. Telecommunications Facilities shall be installed within an existing underground duct or conduit whenever Excess Capacity exists within such Utility Facility.
- b. A Grantee with permission to install Overhead Facilities shall install its Telecommunications Facilities on pole attachments to existing or replacement utility poles only, and then only if Surplus Space is available.
- c. Wherever any new or existing electric utilities, cable facilities and Telecommunications Facilities are required to be located or relocated underground within a ROW, a Grantee with permission to occupy the same ROW must also locate or relocate its Telecommunications Facilities underground.
- d. The City reserves the right to require underground installation of Telecommunications Facilities in any and/or all ROW.
- e. Whenever any Telecommunications Facility will exhaust the capacity of a specific ROW to reasonably accommodate future Telecommunications Carriers and Facilities, the Grantee shall provide additional ducts, conduits, manholes and other facilities for nondiscriminatory access to future Carriers.

Subsection 6-2502.10: Construction Permits: All Grantees must obtain construction permits for Telecommunications Facilities as required in Section 6-2505 of this Ordinance, provided, however, that nothing in this Section shall prohibit the City and a Grantee from agreeing to alternative plan review, permit and construction procedures in a Franchise agreement, provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices.

Subsection 6-2502.11: Compensation to City: Each Franchise granted under this Article is subject to the City's right, which is expressly reserved, to fix fair and reasonable compensation to be paid or provided for the property rights granted. Fees and compensation are further discussed in Section 6-2503 of this Ordinance.

Subsection 6-2502.12: Service to the City: In accordance with Subsection 6-2503.4, the City may negotiate service provision from Grantees in respective Franchise agreements. At a minimum, each Grantee shall make its Telecommunications Services available to the City at its most favorable rate for similarly situated users.

Subsection 6-2502.13: Amendment of Franchise Agreement: Whenever a Grantee intends to expand the type of Telecommunication Services offered under an existing Franchise agreement, the

Grantee must request amendment to the original grant. This request will be in the form of a new Franchise application requesting amendment to the original.
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Subsection 6-2502.14: Renewal Applications: A Grantee that desires to renew its Franchise under this Article shall, not more than 240 days or less than 90 days before expiration of the current Franchise, file an application with the City for renewal of its Franchise which shall include the following information:

- a. The information requested pursuant to Subsection 6-2502.2 (Franchise Application).
- b. Any information required pursuant to the specific Franchise agreement between the City and the Grantee.

Subsection 6-2502.15: Renewal Determinations: Within 90 days after receiving a complete application under Subsection 6-2505.15, the City Council shall issue a written determination granting or denying the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reasons for non-renewal. These reasons may involve the same as those considered in granting the original Franchise, per Subsection 6-2502.3, with the addition of the following.

- a. The applicant's compliance with the requirements of this Ordinance and their Franchise agreement.

Subsection 6-2502.16: Obligation to Cure as a Condition of Renewal: No Franchise shall be renewed until any ongoing violations or defaults in the Grantee's performance of the Franchise agreement, or of the requirements of this Article, have been cured, or a plan detailing the corrective action to be taken by the Grantee has been approved by City Council.

SECTION 6-2503: Fees and Compensation

Subsection 6-2503.1: Purpose: It is the purpose of this Section to provide for the fair and reasonable payment and recovery of all direct and indirect costs and expenses of the City related to the enforcement and administration of this Ordinance and to provide for reasonable compensation for the use by the Grantee of publicly maintained ROW.

Subsection 6-2503.2: Application and Review Deposit:

- a. Any applicant for a Franchise pursuant to Section 6-2502 of this Article shall pay a base application deposit of \$5,000. The application and review deposit shall be deposited with the City as part of the application filed pursuant to Section 6-2502 of this Article by

a certified check or cashier's check made payable to the "City of Savannah". After the review of the application is completed and a determination to grant or deny a franchise has been made, the actual cost of the review will be

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ascertained. If a Franchise is granted, any balance remaining from the \$5,000 deposit will be credited toward the payment of quarterly franchise fees. If a Franchise is denied, any balance remaining from the \$5,000 deposit will be refunded.

- b. Application deposits serve to cover the direct and indirect costs incurred by the City in processing the application, evaluating the applicant, and granting a Franchise.

Subsection 6-2503.3: Other City Costs: The City reserves the right to, within thirty (30) days after written demand, require an applicant Grantee to reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, waiver request, amendment, renewal or transfer of a prior granted Franchise or Franchise agreement.

Subsection 6-2503.4: Annual Fees and Other Compensation for Privilege to Use Public Right-of-Way: Unless otherwise provided in the Franchise agreement the Grantee shall provide the following as reasonable, non-discriminatory compensation for the privilege to use public ROW granted by the Franchise:

- a. Franchise Fee - A Franchise Fee shall be paid by the Grantee within thirty (30) days after the end of each calendar quarter. The amount of the Franchise Fee shall be the sum of the following:
 - (1) Gross Revenue for the calendar quarter including, but not limited to, revenues received from the rental, lease or sublease of any conduit space, or any portion of the franchisee's telecommunications system, or any capacity to other person, whether or not owned in whole or part by the franchisee, for the provision of telecommunications services (excluding revenue from local telephone service as defined and regulated by the PSC) multiplied by three (3) percent, according to each Franchise agreement;
 - (2) Revenue from recurring local telephone service as defined and regulated by the PSC (excluded from previous paragraph (1)) multiplied by the maximum percentage allowed by the PSC which can be collected by the City before Franchise fee payments are authorized to be collected by the Grantee pro rata from the customers receiving exchange service within the City.

The Franchise Fee is in addition to fees paid by Grantees pursuant to Subsections 6-2503.2/.3/.5.

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Grantees shall provide documentation with Fee submission sufficient to demonstrate Franchise Fee calculation from applicable Gross Revenues and/or revenue from recurring local telephone service.

In lieu of paragraph a.(1) above, a Telecommunications Carrier may elect to provide equipment and services. Grantees shall provide information to the City concerning approximate monetary worth of all negotiated compensation. The City will use this information to further its policy to create franchise compensation arrangements which are in the aggregate fair and equitable and do not favor one Grantee over another. A Telecommunications Carrier may elect to provide compensation, such as the items listed below, in any combination, provided the value is equal to the present value of the 3% franchise fee over the lifetime of the franchise agreement.

- a. Three (3) pair of single mode fibers and provision of indefeasible rights to the City for use of said fibers for municipal purposes throughout the Grantee's network with maintenance to be provided by the Grantee.
- b. Lateral connection of any six (6) requested City government facilities within 100 feet of the Grantee's network, with Franchise term maintenance provided by the Grantee. The Grantee will provide any additional requested lateral connections within 100 feet of its network at Grantee's cost, reimbursed by the City.

Both (a) and (b) above shall be for the term of the Franchise with the option, at the City's discretion, for permanent ownership by the City at fair and reasonable cost of purchase should the Franchise terminate. The City, at its discretion, may assign fiber obtained in conjunction with this Ordinance to another entity. The City will not assign such fiber as a revenue generator to the City. The intent is to allow the City to extend its internal communications system to locations not covered by the provider.

- c. Negotiated services (for the term of the Franchise) and/or equipment (for the term of the Franchise with the option, at the City's discretion, for permanent ownership by the City at fair and reasonable cost of purchase should the Franchise terminate).

- d. Monetary compensation, either lump sum or an annuity.
- e. A 1% capital investment escrow account, which the City may use for any City desired telecommunications service or equipment.

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Subsection 6-2503.5: Compensation for City Property: If the right is granted by Franchise to use and occupy City Property for the installation of Telecommunications Facilities, the compensation to be paid shall be fixed by the City on a competitively neutral, non-discriminatory basis and consistent with this Ordinance.

Subsection 6-2503.6: Regulatory Fees and Compensation Not a Tax: The regulatory fees and costs provided for in this Section, and any compensation charged and paid for Public ROW occupation provided for in this Article, are separate from, and additional to, any and all federal, State, and local and City taxes as may be levied, imposed or due from a Telecommunications Carrier or Provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of Telecommunications Services.

SECTION 6-2504: Conditions of Grant

Subsection 6-2504.1: Location of Facilities: All Facilities shall be constructed, installed and located in accordance with Subsection 6-2502.9 of this Article.

Subsection 6-2504.2: Construction Permits: All Franchise Grantees are required to obtain construction permits for Telecommunications Facilities as required and provided for in Subsection 6-2502.10 and Section 6-2505 of this Ordinance.

Subsection 6-2504.3: Interference with Public Right-of-Way: No Franchise Grantee may locate or maintain its Telecommunications Facilities so as to unreasonably interfere with the use of the ROW by the City, by the general public or by other Persons authorized to use or be present in or upon the ROW. All such Facilities shall be moved by the Grantee, temporarily or permanently, as determined by the City.

Subsection 6-2504.4: Damage to Property: No Franchise Grantee nor any Person acting on a Grantee's behalf shall take any action or permit any action to be done which may impair or damage any City Property, ROW, or other property located in, on, or adjacent to City property.

Subsection 6-2504.5: Notice of Work: Unless otherwise provided in a Franchise agreement, no Franchise Grantee, nor any Person acting on the Grantee's behalf, shall commence any non-emergency work in or about the ROW prior to obtaining a permit from the City Traffic Engineering Department.

Subsection 6-2504.6: Repair and Emergency Work: In the event of an unexpected repair or emergency, a Grantee may commence such repair and emergency response work as required under the circumstances, provided the Grantee shall notify the City as promptly as possible - at a minimum, notice must be given by the end of the next working day.

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Subsection 6-2504.7: Maintenance of Facilities: Each Franchise Grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, State and local and City requirements.

Subsection 6-2504.8: Relocation or Removal of Facilities: Within thirty (30) days following written notice from the City, a Franchise Grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Telecommunications Facility within the ROW whenever the City Council, City Manager, or City Manager's designee reasonably determines that such removal, relocation, change or alteration is reasonably necessary for;

- a. The construction, repair, maintenance, or installation of any City or other public improvement in or upon the ROW.
- b. The operations of the City or other governmental entity in or upon the ROW.

Subsection 6-2504.9: Removal of Unauthorized Facilities: Within thirty (30) days following written notice from the City, any Grantee, Telecommunications Carrier, or other Person that owns, controls, or maintains any unauthorized Telecommunications System, facility or related appurtenances within the ROW shall, at its own expense, remove such facilities or appurtenances from the ROW. A Telecommunications System or Facility is unauthorized and subject to removal in the following circumstances:

- a. Upon expiration or termination of the Grantee's telecommunications Franchise.
- b. Upon Abandonment of a facility within the ROW.
- c. If the System or Facility was constructed or installed without the prior grant of a telecommunications Franchise.
- d. If the System or Facility was constructed or installed without the prior issuance of a required construction permit.
- e. If the System or Facility was constructed or installed at a location not permitted by the Grantee's telecommunications Franchise and/or construction permit.

Subsection 6-2504.10: Emergency Removal or Relocation of Facilities: The City retains the right and privilege to cut or move any Telecommunications Facility located within the ROW, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

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Subsection 6-2504.11: Damage to Grantee's Facilities: The City shall not be liable for any unintentional damage to or loss of any Telecommunications Facility within the ROW as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the ROW by or on behalf of the City.

Subsection 6-2504.12: Restoration of Public Right-of-Way and City Property:

- a. When a Franchise Grantee, or any Person acting on behalf, does any work in or affecting any ROW or City Property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ROW or City Property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City. Restoration will be consistent with standards required by the City Code and any supporting procedural manuals, technical specifications, and/or standard construction details.
- b. If weather or other conditions do not permit the complete restoration required by this Subsection, the Grantee shall temporarily restore the affected ROW or City Property. Such temporary restoration shall be at the Grantee's sole expense and the Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- c. A Grantee or other Person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle or property by reason of such work in or affecting such ROW or City Property. All traffic control shall comply with the City's current manual of Traffic Control for temporary street construction and maintenance.

Subsection 6-2504.13: Facilities Maps: Each Franchise Grantee shall provide the City Engineer with an accurate map or maps certifying the location of all Telecommunications Facilities within the ROW. Each Grantee shall provide updated maps annually, unless there is no change from the prior year's submission. Where applicable, maps should include identification of excess duct or conduit capacity.

Subsection 6-2504.14: Duty to Provide Information: Within ten (10) days of a written request from the City Manager, each Franchise Grantee shall furnish the City with information sufficient to demonstrate:

- a. That Grantee has complied with all requirements of this Ordinance.

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- b. That all municipal sales, message, and/or telecommunications taxes due the City in connection with the Telecommunications Services and Facilities provided by the Grantee have been properly collected and paid by the Grantee.

The City reserves the right, through its authorized representative(s) and upon reasonable notice, to inspect and audit all books, records, maps and other documents maintained by the Grantee for the purpose of determining the amount of its revenues received and compensation rendered the City in accordance with the Grantee's Franchise agreement. Referenced documents must be made available at reasonable times and intervals.

Subsection 6-2504.15: Leased Capacity:

- a. Grantees constructing new underground ducts or conduit will provide a minimum of 25% Excess Capacity in terms of physical space within respective ducts/conduit. Beyond required compensation to the City per Subsection 6-2503.4 of this Ordinance, the City will be offered use of Excess Capacity at a fair price prior to any negotiations with other Telecommunications Providers. Thereafter, Grantees must negotiate in good faith with all reasonable requests from alternate Telecommunications Providers for lease of Excess Capacity.
- b. A Grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers; provided,
 - (1) Grantee shall furnish the City with a copy or notice of any such lease or agreement.
 - (2) The customer or leasee has complied, to the extent applicable, with the requirements of this Ordinance.
 - (3) The Grantee is not authorized to license or lease to any Person the privilege to occupy or use the City ROW for the conduct of any private business unless such Person has obtained a Franchise or ROW agreement from the City for such use.

Subsection 6-2504.16: Grantee Insurance: Unless otherwise provided in a Franchise agreement, each Telecommunications Carrier shall as a condition of the grant, secure and maintain the following liability insurance policies insuring both the Grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsured:

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- a. Comprehensive general liability insurance with limits not less than;
 - (1) Five Million Dollars (\$5,000,000) for bodily injury or death to each Person;
 - (2) Five Million Dollars (\$5,000,000) for property damage resulting from any one accident; and,
 - (3) Five Million Dollars (\$5,000,000) for all other types of liability.
- b. Automobile liability for owned, non-owned and hired vehicles with a limit of Three Million Dollars (\$3,000,000) for each Person and Three Million Dollars (\$3,000,000) for each accident.
- c. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000).
- d. Comprehensive form premises-operations, explosion and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000).
- e. The liability insurance policies required by this Section shall be maintained by the Grantee throughout the term of the telecommunications Franchise, and such other period of time during which the Grantee is operating without a Franchise agreement, or is engaged in the removal of its Telecommunications Facilities. Each such insurance policy shall contain the following endorsement:

“It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not to renew”
- f. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the Grantee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

Subsection 6-2504.17: General Indemnification: Each Franchise shall include, to the extent permitted by Law, Grantee's express undertaking to defend, indemnify and hold the City and its

officers, employees, agents and representatives harmless from and against any

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and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the Grantee or its Affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its Telecommunications Facilities, and in providing or offering Telecommunications Services over the Facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Article or by a Franchise agreement made or entered into pursuant to this Article.

Subsection 6-2504-18: Performance and Construction Surety: Before a Franchise granted pursuant to this Article is effective, and as necessary thereafter, the Grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and substance acceptable to the City Attorney as may be required by this Article or by an applicable Franchise agreement.

Subsection 6-2504.19: Security Fund: Sixty days after substantial completion of the Grantee's initial construction per the Grantee's first approved construction permit, each Grantee shall establish a permanent security fund with the City by depositing the amount of \$50,000 with the City in cash or an unconditional letter of credit, which fund shall be maintained at the sole expense of the Grantee so long as any of the Grantee's Telecommunications Facilities are located within the ROW.

- a. The fund shall serve as security for the full and complete performance of this Ordinance, including any costs, expenses, fines, facilities removal, damages or loss the City pays or incurs because of any failure attributable to the Grantee to comply with the codes, ordinances, rules, regulations or permits of the City.
- b. Before any sums are withdrawn from the security fund, the City shall give written notice to the Grantee:
 - (1) describing the act, default or failure to be remedied, or the damages, cost or expenses which the City has incurred by reason of Grantee's act or default;
 - (2) providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure, if applicable;
 - (3) providing a reasonable opportunity for Grantee to pay any monies

due the City before the City withdraws the amount thereof from the security fund, if applicable;

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- (4) that the Grantee will be given an opportunity to review the act, default or failure described in the notice with the City Manager or his/her designee.
- c. Grantees shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.
- d. Grantees may not deduct monies withdrawn from the fund by the City from any other revenues due the City, to include Franchise fees.

Subsection 6-2504.20: Performance and Payment Bonds: Unless otherwise provided in a Franchise agreement, Performance and Payment bonds written by a corporate surety acceptable to the City Attorney equal to at least 100% of the estimated cost of constructing Grantee's Telecommunications Facilities within the ROW shall be deposited before any construction is commenced.

- a. The Performance and Payment bonds shall remain in force until sixty (60) days after substantial completion of the work, as determined by the City, including restoration of ROW and other property affected by the construction.
- b. The Performance and Payment bonds shall guarantee, to the satisfaction of the City Attorney:
 - (1) timely completion of construction;
 - (2) construction in compliance with applicable plans, permits, technical codes, and standards;
 - (3) proper location of the Facilities as specified by the City;
 - (4) restoration of the ROW and other property affected by the construction;
 - (5) the submission of "as-built" drawings after completion of the work as required by this Ordinance;

- (6) timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

Subsection 6-2504.21: Coordination of Construction Activities: All Grantees are required to comply with the following:

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- a. By February 1 of each year, Grantees shall provide the City with a schedule of their proposed construction activities in, around, or that may affect the ROW.
- b. Each Grantee shall meet with the City, other Grantees and users of ROW as determined by the City to schedule and coordinate construction in ROW.
- c. All construction locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.
- d. Grantees will not displace any existing public Utility Facilities without the expressed written consent of the responsible City Department.

Subsection 6-2504.22: Assignments or Transfers of Grant: Control of a Telecommunications System or Franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the Grantee, by operation of law or otherwise without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, as expressed by Ordinance and then only on such reasonable conditions as may be prescribed therein.

- a. No grant shall be assigned or transferred in any manner within twelve (12) months after the initial grant of the Franchise, unless otherwise provided in a Franchise agreement.
- b. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a system shall be assigned or transferred before construction of the Telecommunications System has been completed.
- c. Grantee and the proposed assignee or transferee of the grant or system shall provide and certify the following information to the City not less than ninety (90) days prior to the proposed date of transfer:
 - (1) complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
 - (2) all information required of a telecommunications Franchise

applicant pursuant Section 6-2502 of this Article with respect to the proposed transferee or assignee; and,

- (3) any other information reasonably required by the City.

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- d. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualification to own, hold and operate the Telecommunications System pursuant to this Ordinance.
- e. Unless otherwise provided in a Franchise agreement or negotiated at the time of request, the Grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a telecommunications Franchise.
- f. Any transfer or assignment of a telecommunications grant, system or integral part of a system without prior approval of the City under this Section or pursuant to a Franchise agreement shall be void and is cause for revocation of the Franchise.

Subsection 6-2504.23: Transaction Affecting Control of a Grant: Any transactions which singularly or collectively result in a change of fifty-one percent (51%) or more of the ownership or working control of the Grantee, of the ownership or working control of a telecommunications Franchise, of the ownership control of Affiliated entities having ownership control of the Grantee or of a Telecommunications System or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to Subsection 6-2504.22 hereof. Transactions between Affiliated entities are not exempt from City approval.

Subsection 6-2504.24: Revocation or Termination of Grant: A Franchise granted by the City for the privilege to use or occupy City ROW may be revoked for the following reasons:

- a. Construction or operation at an unauthorized location.
- b. Unauthorized substantial transfer of control (51%) of the Grantee.
- c. Unauthorized assignment of a Franchise.
- d. Unauthorized sale, assignment or transfer of Grantee's Franchise assets, or a substantial interest therein.
- e. Misrepresentation or lack of candor by or on behalf of a Grantee in any application to the City.
- f. Abandonment of Telecommunications Facilities in the ROW.

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- g. Failure to relocate or remove Facilities as required in this Ordinance.
- h. Failure to pay taxes, compensation, fees or costs when and as due the City.
- i. Insolvency or bankruptcy of the agents.
- j. Violation of material provisions of any City Ordinance.
- k. Violation of the material terms of a Franchise agreement.

The City reserves the right to take possession of any property Abandoned by the Grantee within City ROW.

Subsection 6-2504.25: Notice and Duty to Cure: In the event that the City Manager believes that grounds exist for revocation of a Franchise, he shall give the Grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the Grantee a reasonable period of time not exceeding thirty (30) days to furnish evidence:

- a. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- b. That rebuts the alleged violation or noncompliance.
- c. That it would be in the public interest to impose some penalty or sanction less than revocation.

Subsection 6-2504.26: Hearing: In the event that a Grantee fails to provide evidence reasonably satisfactory to the City Manager as provided in Subsection 6-2504.25, the City Manager shall refer the apparent violation or noncompliance to the City Council. The City Council shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

Subsection 6-2504.27: Standards for Revocation or Lesser Sanctions: If persuaded that the Grantee has violated or failed to comply with material provisions of this Article, or of a Franchise agreement, the City Council shall determine whether to revoke the Franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- a. Whether the misconduct was egregious.

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- b. Whether substantial harm resulted.
- c. Whether the violation was intentional.
- d. Whether there is a history of prior violations of the same or other requirements.
- e. Whether there is a history of overall compliance.
- f. Whether the violation was voluntarily disclosed, admitted or cured.

SECTION 6-2505: Construction Standards

Subsection 6-2505.1: General: No Person shall commence or continue with the construction, installation or operation of Telecommunications Facilities within the City except as provided in this Section.

Subsection 6-2505.2: Construction Codes: Telecommunications Facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, State and local codes, rules, and regulations including the National Electrical Safety Code.

Subsection 6-2505.3: Construction Permits: No Person shall construct or install any Telecommunications Facilities within City ROW without first obtaining a construction permit from the City Traffic Engineering Department. No permit shall be issued for the construction or installation of Telecommunications Facilities within the City unless the Telecommunications Carrier has filed for and received a Franchise pursuant to Section 6-2502 of this Ordinance. Any construction in areas outside City ROW must be approved and inspected by the City Inspections Department, in accordance with the City's current Standard Building Code.

Subsection 6-2505.4: Applications: Applications for permits to construct Telecommunications Facilities shall be submitted upon forms to be provided by the City Traffic Engineer.

Subsection 6-2505.5: Engineer's Certification: All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules, and regulations.

Subsection 6-2505.6: Traffic Control Plan: All permit applications which involve work on, in,

under, across or along any ROW shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed to prevent injury

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or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. All traffic control plans must comply with City of Savannah and Georgia DOT standards.

Subsection 6-2505.7: Issuance of Permit: Within forty five (45) days after submission of all plans and documents required of the applicant and payment of fees required by this Ordinance, the City Engineer, if satisfied that the applications, plans and documents comply with all requirements of this Ordinance, shall approve the plans and the City Traffic Engineer shall issue a permit authorizing construction of the Facilities, subject to such further conditions, restrictions, or regulations affecting the time, place and manner of performing the work as he/she may deem necessary or appropriate.

Subsection 6-2505.8: Construction Schedule: The Grantee shall submit a written construction schedule to the City Engineer and the City Traffic Engineer ten (10) working days before commencing any work in or about the ROW. The Grantee shall further notify the City Engineer and the City Traffic Engineer not less than two (2) working days in advance of any Excavation or work in the ROW.

Subsection 6-2505.9: Compliance with Permit: All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the Facilities. City representatives shall be provided access to the work and such further information as they may require to ensure compliance with such requirements.

Subsection 6-2505.10: Display of Permit: The Grantee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by City representatives at all times when construction work is occurring.

Subsection 6-2505.11: Survey of Underground Facilities: If the construction permit specifies the location of Facilities by depth, line, grade, proximity to other facilities or other standard, the Grantee shall cause the location of such Facilities to be verified by a registered State of Georgia land surveyor. The Grantee shall relocate any Facilities which are not located in compliance with permit requirements.

Subsection 6-2505.12: Noncomplying Work: Upon order of an authorized City Representative, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Ordinance, shall be removed.

Subsection 6-2505.13: Completion of Construction: The Grantee shall promptly complete all construction activities so as to minimize disruption of the City ROW and other public and private property. All construction work authorized by a permit within City ROW

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including restoration, must be completed according to the schedule established by the Grantee's permit.

Subsection 6-2505.14: As-Built Drawings: Within sixty (60) days after completion of construction, the Grantee shall furnish the City Engineer with *either* two (2) complete sets of chronoflex mylar plans *or*, one (1) complete set of chronoflex mylar plans, one (1) complete set of standard mylar plans and, one (1) complete digital set of plans in DXF format (on 3.5" DS/DD diskette). All plans will be drawn to scale and certified as accurately depicting the location of all Telecommunications Facilities constructed pursuant to the permit.

Subsection 6-2505.15: Restoration of Improvements: Upon completion of any construction work, the Grantee shall promptly repair any and all public and private property improvements, fixtures, structures and facilities in the ROW damaged during the course of construction, restoring the same as nearly as practical to its condition before the start of construction. Restoration must be completed within 15 working days after the construction completion date.

Subsection 6-2505.16: Landscaping Restoration:

- a. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation maintenance, repair or replacement of the construction, installation maintenance, repair or replacement of Telecommunications Facilities, whether such work is done pursuant to a Franchise or permit shall be replaced or restored as nearly as may be practical to the condition existing prior to performance of work.
- b. All landscaping restoration work within ROW shall be done in accordance with landscape plans approved by the City Park & Tree Director.

Subsection 6-2505.17: Construction Surety: Prior to issuance of a construction permit, the Grantee shall provide Performance and Payment bonds, as provided in Subsection 6-2504.20 of this Ordinance.

Subsection 6-2505.18: Responsibility of Owner: The owner of the Facilities to be constructed

and, if different, the Franchise Grantee, are responsible for performance of and compliance with all provisions of this Section.

SECTION 6-2506: Waivers

- a. A Grantee shall not be excused from complying with any of the terms and conditions of a Franchise agreement or this Ordinance by any failure or delay of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
- b. Any provision of this Ordinance may be waived at the sole discretion of the City in compliance with applicable Law.
- c. Grantee may submit a request for waiver to the City at any time during the Franchise term. Such request for waiver may, at the sole discretion of the City, be set for public hearing and a decision shall be made within 90 days following its submission.
- d. The City may authorize the economic, technical, or legal evaluation of any waiver request and the Grantee shall be required to reimburse the City for all reasonable expenditures incurred by the City in connection with such evaluation.

SECTION 6-2507: Effective Date: Upon adoption by the Mayor and Aldermen, this Ordinance shall become effective on _____.

SECTION 6-2508: Repeal Ordinances in Conflict: All Ordinances and parts of Ordinances in conflict herewith are hereby repealed. No entity shall be deemed to waive any rights under Law.

ADOPTED AND APPROVED this 8th day of December, 1999.

Floyd Adams
Mayor

ATTEST:

Dyanne C. Reese

Clerk of Council